



# Cabinet Office

CO (11) 2

## Circular

6 April 2011

**Intended for**

- All Ministers
- All Chief Executives
- All Senior Private Secretaries
- Speaker of the House of Representatives
- Clerk of the House of Representatives
- Chief Parliamentary Counsel
- Controller and Auditor-General
- Chief Ombudsman
- Official Secretary, Government House

## Government decisions and actions in the pre-election period

### Introduction

- 1 As announced by the Prime Minister on 2 February, the 2011 general election is to be held on 26 November. The “pre-election period” is generally regarded as being the three months before a general election; in 2011, the pre-election period will therefore commence towards the end of August.
- 2 This circular provides guidance on government decisions and actions during the pre-election period. It provides advice on:
  - 2.1 government decision making generally during the pre-election period;
  - 2.2 making appointments in the pre-election period; and
  - 2.3 conducting government advertising campaigns during the election period.

### Summary

- 3 In summary:
  - 3.1 The government has the right to govern until the election. The caretaker convention does not apply in the pre-election period.
  - 3.2 Successive governments, however, have exercised restraint in the pre-election period in two main areas:
    - 3.2.1 when making significant appointments (while there is no “blanket ban” on the making of such appointments, a considered process, undertaken in consultation with the Cabinet Office, should be followed); and
    - 3.2.2 when taking action that might result in government advertising campaigns being held during the election campaign (the State Services Commission is able to provide advice to officials in this area).

## Right to govern until the election

- 4 The government has a three year mandate to govern. It is not bound by the caretaker convention during the pre-election period (unless the government loses the confidence of the House before then – see paragraphs 6.16-6.35 of the *Cabinet Manual 2008* for further information about the caretaker convention). This means that the government has full power to make decisions in the pre-election period.
- 5 Successive governments, however, have chosen to restrict their actions to some extent in the period immediately before a general election. This is in recognition of the fact that an election, and therefore potentially a change in government, is imminent. Restraint has, for example, been exercised in making significant appointments, and in relation to some government advertising (see paragraph 6.9 of the *Cabinet Manual 2008*).
- 6 On some occasions in the past, Ministers have sought advice about whether specific actions or decisions should be taken in the pre-election period. It is for the Prime Minister to make the final decision as to whether or not a decision or action (including a significant appointment) should proceed during the pre-election period.
- 7 From a practical perspective, the election period can be a difficult time for Ministers to focus on big or difficult policy questions. A general election always results in a period of reduced decision making capacity at the ministerial and Cabinet level, while Ministers are occupied with the election campaign. This year, the aftermath of the Canterbury earthquakes and the Rugby World Cup will place additional demands on Ministers' time. Chief executives should talk to their Ministers in the earlier part of the year about the matters they wish to see advanced before the election, and agree on timeframes for getting the relevant papers to Ministers and to Cabinet.

## Appointments in the pre-election period

- 8 It has been the practice for governments to exercise restraint in making significant appointments in the pre-election period. Whether or not a particular appointment is “significant” is a matter of judgement. A case-by-case assessment is required, taking into account factors such as:
  - 8.1 the public profile of the position or organisation;
  - 8.2 whether the organisation has a significant strategic or decision making role;
  - 8.3 whether the organisation controls significant assets or funds; and
  - 8.4 whether the organisation is an executive, as opposed to an advisory or technical, body.
- 9 It would be helpful if Ministers were able to consider, at an early stage, the significant appointments that must be made within their portfolios during the pre-election period. The post-election period (and particularly any caretaker government period) can also be a difficult time for Ministers to make appointments. Officials should therefore review the appointments that will need to be made by their Minister during the period from August to December 2011, including appointments to a newly established board during this time.

- 10 Appointments that are not considered to be significant may proceed in the usual way. However, if a significant appointment falls due in the pre-election period, or in the immediate post-election period, the Minister responsible for the appointment should consider either:
  - 10.1 allowing the appointee to remain in office past the expiry date of his or her appointment (i.e. defer the appointment or reappointment decision), if the governing legislation allows that; or
  - 10.2 if the governing legislation does not allow the appointee to continue in the position beyond the expiry date of the appointment, whether a short term appointment, reappointment or an acting appointment can be made.
- 11 All papers proposing appointments during the pre-election or the immediate post-election period, including short term or acting appointments or reappointments, should be put to the Cabinet Appointments and Honours Committee (APH) and Cabinet in the usual way.
- 12 The Cabinet Office is available to provide guidance and advice on precedents, and on the process to be followed if an appointment to a significant position is proposed.

### Government advertising

- 13 During the election period, successive governments have chosen to avoid holding advertising campaigns that may create a perception that funds are being used to finance publicity for party political purposes (see paragraph 6.9 of the *Cabinet Manual 2008* and the Guidelines for Government Advertising, which are set out in Appendix B of the *Manual*). Ministers should be alert to this issue when making decisions that might result in government advertising campaigns during the election campaign.

### Further advice

- 14 The Secretary of the Cabinet is available to provide advice on decisions and actions around election time. There is also helpful guidance about elections in chapter 6 of the *Cabinet Manual 2008* (see [www.cabinetmanual.cabinetoffice.govt.nz](http://www.cabinetmanual.cabinetoffice.govt.nz)).
- 15 The State Services Commission will be issuing guidance within the next few weeks on *State Servants, Political Parties, and Elections: Guidance for the 2011 Election Period*.
- 16 Further guidance will be issued by the Cabinet Office and the State Services Commission on election-related issues as the year progresses.

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